Kerajaan Negeri Sarawak & Ors v Basnol bin Abol (deceased) & Ors and other appeals

A

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEALS NOS Q–01–8, Q–01–9 AND Q–01–10 OF 2002
ABDUL HAMID MOHAMAD, MOHD NOOR AHMAD AND PS GILL JJCA
29 NOVEMBER 2002

B

Land Law *— State land — Alienation by State Authority — Agreement entered into between the plaintiffs and defendants in a settlement scheme — Defendants agreed to cause documents of titles to be issued to plaintiffs at the successful completion of the scheme — Whether State land to be alienated according to the provisions of the Land Code or under the agreement — Whether defendants were under an obligation to cause the documents of title to be issued to plaintiffs — Whether plaintiffs had to pay premium — Sarawak Land Code ss 13(1), (c), 447*

C

In the trial court, the learned judicial commissioner consolidated all the 24 actions and heard them together. At the end of the hearing, except three suits ('the excepted suits'), the learned judicial commissioner granted a declaration in favour of the plaintiffs that they were entitled to be issued with documents of title of their respective lots of land. The excepted suits with dismissed. The undisputed facts were that the plaintiffs (other than those in the excepted suits), were and are the original settlers of a youth settlement scheme ('the Scheme') set up by the first defendant and under the control and supervision of the Agricultural Department. On or about 24 June 1975, each of the plaintiffs entered into separate deeds of agreement with the first defendant ('the Agreement'). The Agreement was signed for and on behalf of the first defendant by the third defendant. Under the Agreement, each plaintiff was given a loan which was to be repaid in monthly installments from the eighth year of the settling period and contained undertakings on the plaintiffs' participation in the Scheme, the repayment of the loan and sale of the farm produce. Clause 7 of the Agreement, inter alia, provided that if the borrower has fully repaid the loan to the Government, the Government will cause to be issued to the borrower a document of title by way of a lease of 60 years in respect of the lots. Subsequently, after successfully complying with the terms and conditions of the Agreement, the plaintiffs were issued with temporary occupation licences and were informed that the documents of title would be issued, but that the alienation of the land would be carried out in accordance with the provisions of s 13 of the Land Code, subject to the payment of a premium, which the plaintiffs refused to pay. They also refused to apply to the Majlis Mesyuarat Kerajaan Negeri for exemption on the payment of the premium under s 13(1)(c) of the Land Code. Counsel for the plaintiffs contended that the averment in the re-amended statement of defence amounted to an admission by the defendants that the plaintiffs were entitled to be issued with the documents of title, and having regard to cl 7(b), no premium should be payable as it was not contemplated by the parties.

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A The learned senior state legal officer asserted that as all the lots are State land, the alienation must be carried out in accordance to the Land Code and s 13 stipulates the payment of a premium, unless exempted. The learned judicial commissioner granted a declaration in favor of the plaintiffs, inter alia, that they were entitled to be issued with the documents of title. In the excepted suits, the plaintiff in Suit B No 22–62–97 (MR) took over his brother's place in the Scheme and claimed that as the repayments he made were accepted, he was led to believe that he had been accepted as a settler in the Scheme and that the defendants were estopped from denying him of the benefits under the Agreement. The plaintiffs in Suits Nos 22–63–97 (MR) and 22–C 64–97 (MR) had successfully participated in the Scheme and were successfully assessed but had not entered into deeds of agreement with the first defendant. They claimed that notwithstanding the absence of the deeds of agreement, they had entered into binding agreements by exchange of letters and had legitimate expectations to be issued with documents of title to their lots.

D

Held:

(1) The law governing the Agreement, in particular cl 7(b) on the issuance of the documents of title, is the Land Code, and the relevant provisions are ss 13(1) and 44 (see p 385G).

E

(2) The lots occupied by the plaintiffs are State land. The obligation to issue the documents of title to the plaintiffs undertaken by the first defendant under cl 7(b) of the Agreement amounted to alienation of the State land and could only be done in accordance with the Land Code. Under s 13(1) of the Land Code, the F Director of Lands and Surveys is required by law to alienate the State land in consideration of an annual rent and, unless exempted, a premium. The power to exempt the payment of the premium vests solely with the Majlis Mesyuarat Kerajaan Negeri which is a separate entity from the State Government. The State Government has no power to grant the exemption, nor can G the State Government bind the Majlis Mesyuarat Kerajaan Negeri in respect of the exemption of the premium (see p 386B–C, G–I); *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 followed; *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors* [1995] 3 CLJ 114 and *Steven Phoa Cheng Loon v Highland Properties Sdn Bhd & Ors* H [2000] 4 MLJ 200 referred.

(3) At the most, the obligation of the first defendant under cl 7(b) of the Agreement was to alienate the lots to the plaintiffs, which it had agreed to do, through the Director of Lands and Surveys by the issuance of the documents of title to the plaintiffs by way of a I lease for a term of 60 years subject to the payment of annual rent and, unless exempted by the Majlis Mesyuarat Kerajaan Negeri, the premium. Such obligation could not be construed in

any other way otherwise it would be contrary to law. The general rule is that statute overrides contractual provisions. The learned judicial commissioner erred when he concluded that in giving such an undertaking in the Agreement, it could be deemed that the first defendant had exempted the plaintiffs from the payment of the premium for the alienation of the lots (see p 387A–B).

(4) By s 44 and the decision in *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123, the door was sealed for the plaintiffs to acquire the title to the lots in any other way except through the provisions of s 13(1)(c) of the Land Code (see p 387F–G); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123 followed.

(5) With regard to the appeals in the excepted suits, by reason of the decision in the 21 actions, the appeals were dismissed with costs (see p 387I).

[Bahasa Malaysia summary

Di dalam mahkamah perbicaraan, pesuruhjaya kehakiman yang bijaksana telah menyatukan dan mendengar kesemua 24 tindakan bersama. Pada akhir perbicaraan, kecuali tiga guaman ('guaman-guaman yang dikecualikan'), pesuruhjaya kehakiman yang bijaksana telah memberi perisytiharan yang memihak kepada plaintif-plaintif yang mana plaintif-plaintif adalah berhak untuk diberi dokumen-dokumen hakmilik untuk lot-lot tanah masing-masing. Guaman-guaman yang dikecualikan telah ditolak. Fakta-fakta yang tidak dipertikaikan adalah bahawa plaintif-plaintif (selain daripada guaman-guaman yang dikecualikan), adalah peneroka-peneroka asal satu skim penempatan belia ('Skim tersebut') yang ditubuhkan oleh defendan pertama dan di bawah kawalan dan pengawasan Jabatan Pertanian. Pada 24 Jun 1975, setiap plaintif telah memasuki suratikatan-suratikatan perjanjian berasingan dengan defendan pertama ('Perjanjian tersebut'). Perjanjian tersebut telah ditandatangani untuk dan bagi pihak defendan pertama oleh defendan ketiga. Di bawah Perjanjian tersebut, setiap plaintif telah diberikan satu pinjaman yang patut dibayar balik secara ansuran bulanan daripada tahun kelapan tempoh penempatan dan mengandungi akujanji-akujanji penyertaan plaintif-plaintif dalam Skim tersebut, pembayaran balik pinjaman dan jualan hasil pertanian. Fasal 7 Perjanjian tersebut, antara lain, memperuntukkan bahawa jika peminjam telah membayar balik sepenuhnya pinjaman tersebut kepada Kerajaan, Kerajaan akan mengarahkan dikeluarkan kepada peminjam tersebut satu dokumen hakmilik melalui satu pajakan untuk 60 tahun berhubung lot-lot tersebut. Berikutan itu, setelah

berjaya mematuhi terma-terma dan syarat-syarat Perjanjian tersebut, plaintif-plaintif telah diberikan lesen-lesen penempatan sementara dan telah dimaklumkan bahawa dokumen-dokumen hakmilik tersebut akan dikeluarkan, tetapi pemberian milikan tanah tersebut akan dilaksanakan menurut peruntukan-peruntukan s 13 Kanun Tanah, tertakluk kepada pembayaran satu premium, di mana plaintif-plaintif telah enggan untuk membayar. Mereka juga enggan untuk memohon kepada Majlis Mesyuarat Kerajaan Negeri untuk pengecualian pembayaran premium tersebut di bawah s 13(1)(c) Kanun Tanah. Peguam bagi pihak plaintif-plaintif menegaskan bahawa penegasan dalam pernyataan pembelaan yang telah dipinda membentuk satu pengakuan oleh defendan-defendan bahawa plaintif-plaintif berhak diberikan dokumen-dokumen hakmilik tersebut, dan berkaitan fasal 7(b), tiada premium patut dibayar kerana ia tidak terfikir oleh pihak-pihak tersebut. Pegawai kanan undang-undang negeri menegaskan bahawa oleh kerana semua lot-lot tersebut adalah tanah Kerajaan, pemberian milikan tanah tersebut mesti dilaksanakan menurut Kanun Tanah dan s 13 menyatakan tentang bayaran satu premium, kecuali jika telah diberi pengecualian. Pesuruhjaya kehakiman yang arif telah memberikan satu deklarasi menyebelahi plaintif-plaintif, antara lain, bahawa mereka layak untuk diberikan dokumen-dokumen hakmilik tersebut. Dalam guaman-guaman yang dikecualikan, plaintif dalam Guaman No 22–62–97 (MR) telah mengambil alih tempat abang beliau dalam Skim tersebut dan mendakwa bahawa memandangkan pembayaran balik yang beliau buat telah diterima, ini telah menyebabkan beliau mempercayai bahawa beliau telah diterima sebagai seorang peneroka dalam Skim tersebut dan bahawa defendan-defendan telah diestopkan daripada menafikan faedah-faedah di bawah Perjanjian tersebut. Plaintif-plaintif dalam Guaman-Guaman No 22–63–97 (MR) dan No 22–64–97 (MR) telah berjaya menyertai Skim tersebut dan berjaya dinilai tetapi tidak memasuki suratikatan-suratikatan perjanjian tersebut dengan defendan pertama. Mereka menuntut meskipun terdapat ketiadaan suratikatan-suratikatan perjanjian tersebut, mereka telah memasuki perjanjian-perjanjian yang mengikat melalui pertukaran surat-menyurat dan mempunyai jangkaan-jangkaan yang sah yang diberikan bersama dokumen-dokumen hakmilik kepada lot-lot mereka.

Diputuskan:

(1) Undang-undang yang mengawal Perjanjian tersebut, khususnya fasal 7(b) berhubung pengeluaran dokumen-dokumen hakmilik, adalah Kanun Tanah, dan peruntukan-peruntukan relevan adalah ss 13(1) dan 44 (lihat ms 385G).

(2) Lot-lot yang didiami oleh plaintif-plaintif adalah tanah Kerajaan. Kewajipan untuk mengeluarkan dokumen-dokumen hakmilik kepada plaintif-plaintif yang telah dijanjikan oleh defendan

pertama di bawah fasal 7(b) Perjanjian tersebut membentuk satu pemberian milikan tanah Kerajaan dan hanya boleh dibuat menurut Kanun Tanah. Di bawah s 13(1) Kanun Tanah, Pengarah Tanah dan Ukur dikehendaki, menurut undang-undang, untuk memberi milikan tanah Kerajaan tersebut dengan satu sewa bulanan dan, kecuali diberikan pengecualian, satu premium sebagai balasan. Kuasa untuk mengecualikan pembayaran premium tersebut terletak sepenuhnya dengan Majlis Mesyuarat Kerajaan Negeri yang merupakan satu entiti yang berasingan daripada Kerajaan Negeri. Kerajaan Negeri tiada kuasa untuk memberikan pengecualian tersebut, ataupun mengikat Majlis Mesyuarat Kerajaan Negeri berhubung pengecualian premium (lihat ms 386B–C, G–I); *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313, *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors* [1995] 3 CLJ 114 dan *Steven Phoa Cheng Loon v Highland Properties Sdn Bhd & Ors* [2000] 4 MLJ 200 diikut.

(3) Lebih-lebihpun, kewajipan defendan pertama di bawah fasal 7(b) Perjanjian tersebut adalah untuk memberi milikan lot-lot tersebut kepada plaintif-plaintif, di mana ia telah bersetuju untuk berbuat demikian, melalui Pengarah Tanah dan Ukur dengan pengeluaran dokumen-dokumen hakmilik kepada plaintif-plaintif melalui satu pajakan bagi tempoh 60 tahun tertakluk kepada pembayaran sewa bulanan dan, jika ia tidak dikecualikan oleh Majlis Mesyuarat Kerajaan Negeri, premium tersebut. Kewajipan tersebut tidak boleh ditafsirkan dalam erti kata lain, jika tidak ia akan bertentangan dengan undang-undang. Pesuruhjaya kehakiman yang arif telah terkhilaf apabila beliau memutuskan bahawa dalam memberikan satu akujanji sedemikian dalam Perjanjian tersebut, ia boleh dianggap bahawa defendan pertama telah mengecualikan plaintif-plaintif daripada pembayaran premium untuk pemberian milikan lot-lot tersebut (lihat ms 387A–B).

(4) Melalui s 44 dan keputusan kes *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123, peluang untuk plaintif-plaintif memperolehi hakmilik lot-lot tersebut dengan apa-apa cara sekalipun tertutup selain daripada melalui peruntukan s 13(1)(c) Kanun Tanah (lihat ms 387F–G); *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123 diikut.

(5) Berhubung rayuan-rayuan dalam guaman-guaman yang dikecualikan, oleh sebab keputusan dalam 21 tindakan-tindakan, rayuan-rayuan tersebut ditolak dengan kos (lihat ms 387I).]

A **Notes**

For cases on alienation of State land by State Authority, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue), para 3868.

B **Cases referred to**

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors [1984] 2 MLJ 123 (folld)

Kerajaan Negeri Selangor v Maraputra Sdn Bhd [1992] 1 CLJ 441 (refd)

C *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 (refd)

Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors [1995] 3 CLJ 114 (refd)

Steven Phoa Cheng Loon v Highland Properties Sdn Bhd & Ors [2000] 4 MLJ 200 (refd)

D *Stiles v Galinski, Nokes and another v Corporation of Islington (No 2)* [1904] 1 KB 615 (refd)

Legislation referred to

E Evidence Act 1950 s 92
Land Code s 13, (1), (c), 44
National Land Code s 48

Appeal from: Suit Nos 22–46–96 (MR), 22–28–97 (MR), 22–29–97 (MR), 22–30–97 (MR), 22–31–97 (MR), 22–32–97 (MR), 22–44–97 (MR), 22–45–97 (MR), 22–46–97 (MR), 22–47–97 (MR), 22–48–97 (MR), 22–49–97 (MR), 22–50–97 (MR), 22–51–97 (MR), 22–52–97 (MR), 22–53–97 (MR), 22–54–97 (MR), 22–55–97 (MR), 22–57–97 (MR) and 22–04–98 (MR) (High Court, Miri)

Thomas Akin Jelimin (*Joseph Chioh* with him) (Kamar Peguam Besar Negeri Sarawak) for the appellants in Civil Appeal No Q–01–8 of 2002 and for the respondents in Civil Appeals Nos Q–01–9 of 2002 and Q–01–10 of 2002.

Fabian AH Lim (*Lim Heng Choo* with him) (*Lim & Lim*) for the first to the twelfth respondents in Civil Appeal No Q–01–8 of 2002 and the appellant in Civil Appeal No Q–01–9 of 2002.

H *Makanda Singh Sandhu* (*MS Sandhu & Co*) for the thirteenth to the nineteenth respondents in Civil Appeal No Q–01–8 of 2002 and for the appellants in Civil Appeal No Q–01–10 of 2002.

John Trang (*Antalai, Trang & Co*) for the twentieth and the twenty-first respondents in Civil Appeal No Q–01–8 of 2002.

I **Mohd Noor Ahmad JCA** (delivering judgment of the court): The learned judicial commissioner consolidated all the 24 actions and heard them together. At the end of the hearing, except for three suits, nos 22–62–97

(MR), 22–63–97 (MR) and 22–64–97 (MR), the learned judicial commissioner granted a declaration in favour of the plaintiffs that they are entitled to be issued with documents of title to their respective coconut and padi lots and ordered damages in lieu of the issuance of the documents of title, to be assessed by the deputy registrar with costs. However, the excepted suits were dismissed with costs. In respect of the 21 actions, the defendants appealed (Civil Appeal No Q–01–8–2002) and with regard to the excepted suits, the plaintiffs appealed (Civil Appeal No Q–01–9–2002 for Suit No 22–62–97 (MR) and Civil Appeal No Q–01–10–2002 for Suits Nos 22–63–97 (MR) and 22–64–97 (MR)). All the appeals were heard together.

It is not disputed that:

(1) The plaintiffs, other than the plaintiffs in the excepted suits, were and are still the original settlers of a youth settlement scheme known as the the Pujut/Lopeng Settlement Scheme in the Fourth Division, Miri ('the Scheme'). The Scheme was set up by the first defendant with the primary objective of settling rural secondary school leavers and of educating them to undertake economic and scientific farming. The Scheme was under the control and supervision of the Agricultural Department. Before joining the Scheme, they underwent training at a farmers' institute organized by the department, and thereafter were selected to participate in the Scheme. Upon joining the Scheme they lived communally and toiled the land 'on a gotong-royong' basis. Initially they cleared the swampy land of undergrowth, trees and shrubs and thereafter constructed drains and bunds and hand-ploughed the land for padi cultivation.

(2) On or about 24 June 1975, each of them entered into a separate deed of agreement with the first defendant ('the Agreement') containing similar terms and conditions. The Agreement was signed for and on behalf of the first defendant by the third defendant. Under the Agreement, each plaintiff was given a loan of RM6,800 for subsistence and for the erection of a dwelling house. The loan was to be repaid by monthly instalments commencing from the eighth year of the settling period. The Agreement also contained various undertakings by the plaintiffs, inter alia, relating to their active participation in the Scheme, the repayment of the loan and the sale of the farm produce.

(3) Clause 7 of the Agreement on which the plaintiffs relied provides:

> (a) Subject to the provisions of cl 3(b), the Government will cause to be issued to the Borrower in the third year of the settling period a Temporary Occupation Licence each in respect of —
>
> (i) the coconut lot containing ten (10) acres more or less in the Scheme; and
>
> (ii) the padi lot containing three (3) acres more or less in the Scheme.
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> (b) At the expiration of the seventh (7) year after the settling period has been completed (but not earlier) and if the Borrower shall have fully

repaid the loan to the Government, the Government will cause to be issued to the Borrower, a document of title by way of lease for a term of sixty (60) years in respect of the coconut lot and the padi lot referred to in sub-para (a) above.

The expression 'the settling period' is defined in the Agreement to mean the settling period of eight years required of a settler under the Scheme. Under the clause, subject to the full repayment of the loan by the settlers, the Government undertakes to cause to be issued to them the documents of title by way of a 60 year lease to the respective lots.

(4) The plaintiffs had complied with all the terms and conditions of the Agreement including the repayment of the loan, and had successfully participated in the Scheme. They had been issued with the temporary occupation licences in respect of the coconut lot and padi lot but were not renewed after their expiry. However, by a letter of 27 March 2001 from the state legal officer to the plaintiffs' solicitors, they were informed that the documents of title to their respective lots would be issued in accordance with the Agreement but the alienation of the land had to be carried out in accordance with the provisions of s 13 of the Land Code. And in the letter of 9 May 2002 to each of them the second defendant informed them that the alienation was subject to certain conditions including the payment of a premium at the rate of 30% of the value of the land, which was calculated to be in the range of RM2.187m to RM2.776m in respect of the coconut lot and RM655,560 to RM990,660 in the case of the padi lot. They not only refused to pay the premium but also refused to apply to the Majlis Mesyuarat Kerajaan Negeri for exemption on the payment of the premium under the provisions of s 13(1)(c) of the Land Code.

(5) In Suit No 22–62–97 (MR), the plaintiff took over his brother's place in the Scheme after the brother's death. The Agricultural Department was aware of these facts. After the plaintiff's death his wife took over and continued with the action. No notice had been issued to the plaintiff and his wife to vacate the land in the Scheme after the brother's death. The repayment by instalments of the loan granted to the brother made by the plaintiff was accepted. Therefore, the plaintiff claimed that he was led to believe by the conduct of the defendants that he had been accepted as a settler in the Scheme and that the defendants are estopped from denying him of the benefits under the Agreement.

(6) In respect of Suits Nos 22–63–97 (MR) and 22–64–97 (MR), the plaintiffs were selected as new settlers to the Scheme by virtue of a letter to each of them by a divisional agricultural officer dated 18 September 1985. They were given the opportunity to participate in the Scheme on a trial basis for a period of one year and in the event of successful completion, they would be required to enter into a deed of agreement with the first defendant. Each of them were allocated a plot of land. They successfully participated in the Scheme and were successfully assessed. Therefore, they claimed that, notwithstanding

the absence of a deed of agreement, they had entered into a binding agreement with the first defendant by exchange of letters in the terms of the letter of 18 September 1985 and that they have a legitimate expectation to be issued with the documents of title to their respective lots in the same manner as the other settlers who had executed the Agreement with the first defendant.

The learned counsel for the plaintiffs contended that the averment in para 6.2 of the re-amended statement of defence amounted to an admission by the defendants that the plaintiffs are entitled to be issued with the documents of title. Although the issuance of the documents of title amounts to alienation of State land under s 13 of the Land Code, however, having regard to cl 7(b) of the Agreement, no premium should be payable. The payment of premium was never contemplated by the parties. Had the first defendant intended to impose the premium for the alienation of the lots it would have expressly provided for it in the Agreement. Therefore, the imposition of the premium would be tantamount to a variation of the terms of the Agreement, and such an imposition as a condition for the performance of its undertaking under cl 7(b) of the Agreement constitutes a breach or repudiation of the Agreement by the first defendant.

On the contrary, the learned senior state legal officer asserted that as all the lots occupied by the plaintiffs are State land, the reference to the issuance of documents of title has to be construed as alienation of State land. The alienation of State land can be carried out only in accordance with the provisions of the Land Code and not otherwise. Under s 13 of the Land Code, the alienation is subject to the payment of an annual rent and, unless exempted, the payment of a premium. The fact that cl 7(b) of the Agreement is silent on the requirement to pay a premium does not entitle the plaintiffs to be exempted from the payment thereof. The expression '... will cause to be issued to the borrower, a document of title by way of lease ...' in the clause clearly implies that the alienation will have to be done only through the Director of Lands and Surveys in conformity with the requirements of the Land Code, including the payment of premium, unless exempted. To construe otherwise would have the effect of giving the clause an interpretation repugnant to the provisions of s 13(1) of the Land Code. Hence, the first defendant is not in breach of the Agreement for the imposition of the requirement to pay the premium. He cited the Federal Court cases of *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 and *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corpn Sdn Bhd v Yap Chong Lan & 12 Ors* [1984] 2 MLJ 123 in support thereof.

The learned judicial commissioner held that although the Director of Agriculture signed the Agreement, it was made with the authority of the first defendant and hence, the defendants are bound by the terms thereof. The undertaking to cause the issue of the documents of title in cl 7(b) of the Agreement binds the first defendant because the first defendant has the authority or was acting within the scope of its jurisdiction to give such an

A undertaking, since under the Land Code, the entire property and control of State land is vested solely in the Government, that is to say, the first defendant. Having resorted to the *Concise Oxford Dictionary* (9th Ed) on the word 'cause' and fortified by the statement of Lord Alverstone in *Stiles v Galinski, Nokes and another v Corporation of Islington (No 2)* [1904] 1 KB 615 on the use of the word 'cause', the learned judicial commissioner B opined that the undertaking by the first defendant under cl 7(b) of the Agreement that 'it will cause to be issued to the borrower a document of title' can be interpreted to mean that the first defendant will take such steps as is reasonably necessary or expedient to see that the documents of title are issued to the plaintiffs. In other words, it is the duty of the defendants to C deal with all the necessary requirements under the Land Code, including the question of premium, to see that the plaintiffs will be issued with the documents of title to their respective lots. In giving such an undertaking in the Agreement, it can be deemed that the first defendant had exempted the plaintiffs from the payment of a premium for the alienation of the lots. Such an interpretation is consistent with the purpose for which the Scheme was D established. The learned judicial commissioner was also of the view that the requirement to get the exemption on the payment of the premium from the Majlis Mesyuarat Kerajaan Negeri under the Land Code has to be initiated by the defendants in order to honour their obligation to the plaintiffs under the Agreement. Therefore, the learned judicial commissioner held that the imposition of the premium which could have been waived is contrary to the E undertaking under cl 7(b) of the Agreement. Thus, the plaintiffs in the 21 actions have the right to be issued with the documents of title to their respective lots without any payments of premium.

This appeal revolves on the construction of cl 7(b) of the Agreement which is pivoted by the relevant provisions of the Land Code. Parties do not F make contracts in a vacuum. They always negotiate against the background of the law. It is therefore reasonable to suppose that they take into account the general law in reaching their ultimate consensus. And accordingly, the proper construction of their agreement is properly influenced by the legal background against which it is made (see the *Interpretation of Contracts* (2nd Ed) by Kim Lewison QC, para 3.04 at p 73). To my mind, the legal G background is this. The law governing the Agreement, in particular cl 7(b) on the issuance of the documents of title, is the Land Code. The relevant provisions of the Land Code are ss 13(1) and 44.

Section 13(1) provides:

H (1) Subject to the direction of the Minister under subsection (1A) of s 3, the Director may alienate State land, other than Native Customary Land; and

(a) in perpetuity or for such terms as may be fixed by rules made under this Code for the respective classes of land referred to in such rules;

(b) in consideration of the payment of an annual rent;

I (c) in consideration, unless the Majlis Mesyuarat Kerajaan Negeri thinks fit to exempt therefrom in any particular case, of the payment of a premium, and where the alienation has been made in consideration of the payment of a premium, the amount of the

> premium shall be stated. The payment of the premium, if any, may be made either by a single payment or by instalments over a period not exceeding ten years as may be determined by the Superintendent;

And s 44 states:

> No person shall acquire any right or title against the Government by virtue of any adverse possession, unlawful occupation or occupation under temporary licence, and no right or title shall be acquired against the Government, save such right or title as may be lawfully granted under this Code.

The lots occupied by the plaintiffs are State land. The obligation to issue the documents of title to the plaintiffs undertaken by the first defendant under cl 7(b) of the Agreement amounted to alienation of the State land. The alienation of State land can only be done in accordance with the Land Code (per Raja Azlan Shah CJ (Malaya) (as His Highness then was) in the Federal Court case of *Sidek bin Haji Muhamad & 461 Ors*). In that case, his Lordship states at p 314:

> Assuming what the State Director of Lands and Mines said in the *Utusan Melayu* is true, can he bind the State Government? The short answer is that he had no authority to bind the government to alienate State land to the settlers. For this a formal resolution of the State Authority is necessary. The want of authority was clearly pleaded, and is a formidable obstacle to any contention that the appellants' claim lay in estoppel.
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> The only way to obtain State land is by way of the National Land Code. The case falls within the board principle that 'where an Act creates an obligation, and empowers the obligation in a specified manner, we take it as a general rule that performance cannot be enforced in any other manner': (see *Doe d Rochester (Bp) v Bridges* 109 ER 1001, at p 1006). Likewise here in the case of landless. It cannot have been intended by Parliament in enacting the National Land Code that every person who was in need of land should be able to sue the government for it or to take the law into his own hands for the purpose. So the courts must, for the sake of law and order, take a firm stand. *We can sympathize with the plight in which the appellants find themselves. But we can go no further. They must make their appeal for help elsewhere, not to us.* (Emphasis added.)

The decision was followed by the Federal Court in *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors*. That being the case, under s 13(1) of the Land Code, the Director of Lands and Surveys is required by law to alienate the State land in consideration of an annual rent and, unless exempted, a premium. The power to exempt the payment of the premium vests solely with the Majlis Mesyuarat Kerajaan Negeri which is a separate entity from the State Government, that is to say, the first defendant. The State Government which is not synonymous with the Majlis Mesyuarat Kerajaan Negeri has no power to grant the exemption (see *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors* [1995] 3 CLJ 114 and *Steven Phoa Cheng Loon v Highland Properties Sdn Bhd & Ors* [2000] 4 MLJ 200), nor can the State Government bind the Majlis Mesyuarat Kerajaan Negeri in respect of the exemption of the premium. So are the second and

A the third defendants. Hence, at the most, the obligation of the first defendant under cl 7(b) of the Agreement is to alienate the lots to the plaintiffs, which it had agreed to do, through the Director of Lands and Surveys by the issuance of the documents of title to the plaintiffs by way of a lease for a term of 60 years subject to the payment of annual rent and unless exempted by the Majlis Mesyuarat Kerajaan Negeri, the premium.
B Such obligation cannot be construed in any other way otherwise it will be contrary to law. Moreover, the general rule is that statute overrides contractual provisions (see *Kerajaan Negeri Selangor v Maraputra Sdn Bhd* [1992] 1 CLJ 441 (also at [221] MD 1) at p 443).

Therefore, with due respect, the learned judicial commissioner erred
C when he concluded that in giving such an undertaking in the Agreement, it could be deemed that the first defendant had exempted the plaintiffs from the payment of the premium for the alienation of the lots. In other words, the learned judicial commissioner had added something in the clause which was not there. Such a conclusion tantamounts to the inclusion of intrinsic evidence which is not permissible under s 92 of the Evidence Act 1950.
D Further, the conclusion also tantamounts to a waiver of the payment of the premium, as such, it tantamounts to a usurpation by the court of powers exclusively vested in the Majlis Mesyuarat Kerajaan Negeri and therefore, would be ultra vires the provision of s 13(1)(c) of the Land Code.

With regard to s 44 of the Land Code, the section is in pari materia with
E s 48 of the National Land Code, and in relation thereto, the Federal Court held in *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors; Lesco Development Corporation Sdn Bhd v Yap Chong Lan & 12 Ors*, at p 128:

> Section 48 prescribes that no title to State land shall be acquired by
> F possession, unlawful occupation or occupation under any licence for any period whatsoever, ... These statutory provisions by themselves would appear to provide a complete answer to and inhibit the interpolation of any equity in regard to the respondents' claim. *There can be no intervention by equity in the face of the specific legislative provisions of the Code* .... (Emphasis added.)

By the section and the decision, the door is sealed for the plaintiffs to
G acquire the title to the lots in any other way except through the provisions of s 13(1)(c) of the Land Code.

Therefore, the imposition of the premium by the defendants as required by law does not amount to a variation of the terms in the Agreement, as such, there is no breach or repudiation of the Agreement on the part of the defendants.
H

In conclusion, with respect, the declaratory order made by the learned judicial commissioner cannot be justified and upheld, in which event, the order on damages cannot stand. Therefore, the appeals are allowed with costs here and below. The orders of the learned judicial commissioner are hereby set aside.

I With regard to the appeals in the excepted suits, by reason of my decision in the 21 actions, the appeals are dismissed with costs. The deposits are to be paid towards taxed costs.

My learned brothers Abdul Hamid Mohamad and PS Gill JJCA have read this judgment in draft and have expressed their agreement with it.

Order accordingly.

Reported by Chew Phye Ken